

Message Text

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PAGE 01 HAVANA 02146 242049Z
ACTION ARA-14

INFO OCT-01 ISO-00 SNM-05 L-03 PPTE-00 CA-01 DEAE-00
/024 W

-----040285 242054Z /75

P 242019Z JUL 78
FM USINT HAVANA
TO SECSTATE WASHDC PRIORITY 2628

UNCLAS HAVANA 2146

EO 11652: NA
TAGS: SNAR CU
SUBJ: NARCOTICS LAWS - CUBA

REF: STATE 170187

1. CUBAN MINISTRY OF FOREIGN RELATIONS HAS NOT YET GRANTED US
APPOINTMENT WITH APPROPRIATE OFFICIALS TO DISCUSS NARCOTICS LAWS.
AS INTERIM RESPONSE TO REFTEL, HOWEVER, WE PROVIDE FOLLOWING:

2. CURRENTLY OPERATIVE CUBAN NARCOTICS LAWS ARE ARTICLES 461 AND
462 OF CODE OF SOCIAL DEFENSE MODIFIED BY REVISIONS INTRODUCED
IN COUNCIL OF STATE DECREE-LAW 13 SIGNED JANUARY 27, 1978 (OFFICIAL
GAZETTE, FEBRUARY 8, 1978). UPON PROBABLE APPROVAL OF NEW PENEL
CODE IN DECEMBER, 1978, NARCOTICS-RELATED PROVISIONS OF DECREE-
LAW 13 WILL BE TRANSFERRED VERBATIM TO ARTICLES 230, 231, 232,
AND 233 OF NEW PENAL CODE.

3. POSSESSION: CUBAN LAW MENTIONS "TOXIC DRUGS, OR HALLUCINOGENIC,
HYPNOTIC, OR NARCOTIC SUBSTANCES, OR OTHER THINGS OF SIMILAR
EFFECTS." NO OTHER BREAKDOWN IS PROVIDED. PENALTY FOR SIMPLE
POSSESSION OF ANY OF ABOVE SUBSTANCES, WITHOUT PRESCRIPTION,
IS SIX MONTHS TO THREE YEARS JAIL - AT DISCRETION OF COURT. NO
MINIMAL QUALIFYING AMOUNT OF DRUGS IS MENTIONED IN LAW.
SIMPLE POSSESSION HAS LESS SEVERE PENALTY THAN TRAFFICKING.

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4. TRAFFICKING: DRUGS SUBJECT TO TRAFFICKING PENALTIES ARE
AS IN PARA 3. NO QUALIFYING AMOUNT IS ESTABLISHED. LAW
PUNISHES ANYONE WHO "WITHOUT BEING AUTHORIZED,...TRANSPORTS,
TRAFFICS, HAS IN HIS POSSESSION FOR THE PURPOSE OF TRAFFICKING,
OR PROCURES FROM ANOTHER." PENALTY IS THREE TO EIGHT YEARS
JAIL. IF OFFENSE IS REALIZED WITH "RELATIVELY LARGE AMOUNTS"
OF DRUGS PENALTY IS SEVEN TO FIFTEEN YEARS JAIL. IF A MINOR

IS USED IN COMMISSION OF OFFENSE, PENALTY IS SIX TO TWENTY YEARS JAIL. ANYONE WHO "HELPS OR ASSISTS IN ANY FASHION" IN ANY TRAFFICKING OR CULTIVATION OFFENSE IS SUBJECT TO SAME PENALTY AS OFFENDER.

5. CULTIVATION PRODUCTION, ELABORATION.

CULTIVATION OF "CANNABIS INDICA" (MARIJUANA) AND "OTHER THINGS OF SIMILAR PROPERTIES" IS PUNISHED BY THREE TO EIGHT YEARS JAIL. IF CULTIVATOR OWN OR OCCUPIES LAND, CONFISCATION OF, OR EVICTION FROM, LAND CAN ALSO BE MANDATED. PRODUCTION OF ANY DRUGS INDICATED IN PARA. 3 IS PUNISHED BY THREE TO EIGHT YEARS IN JAIL. IF "RELATIVELY LARGE VOLUME" OF CULTIVATION OR PRODUCTION IS INVOLVED, PENALTY IS SEVEN TO FIFTEEN YEARS JAIL. IF MINOR IS USED IN COMMISSION OF OFFENSE, PENALTY IS SIX TO TWENTY YEARS JAIL.

6. FINANCIAL. THERE ARE NO SPECIFICALLY DRUG-RELATED FINANCIAL OFFENSES. RIGID FOREIGN CURRENCY CONTROLS PREVAIL IN CUBA.

7. CRIMINAL PROCEDURE. INVESTIGATIVE DETENTION FORMALLY LASTS UP TO SIX MONTHS BUT CAN BE EXTENDED INDEFINITELY. CONSULAR ACCESS IS PERMITTED, BUT SOMETIMES ONLY AFTER SEVERAL WEEKS OR MONTHS DELAY. CONSUL IS NOTIFIED OF ARRESTS. PRE-TRIAL DETENTION USUALLY LASTS ONE TO TWO MONTHS. TRIALS LAST ONE TO TWO DAYS. TRIAL PROCESS IS AS FOLLOWS: A) PRELIMINARY FINDINGS ARE ISSUED; B) DEFENDANT HAS FIVE DAYS TO ACQUIRE ATTORNEY (USUAL FEE 100 CUBAN PESOS - 130 US DOLLARS).
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FOREIGN DEFENDANTS OFTEN HAVE DIFFICULTY IN HIRING ATTORNEYS - THEY, THEREFORE, TYPICALLY ARE ASSIGNED PUBLIC DEFENDER FREE OF CHARGE; C) TRIAL IS HELD; D) FIVE DAYS OR SO ELAPSE BEFORE SENTENCE IS GIVEN; E) DEFENDANT HAS FIVE DAYS TO APPEAL. APPELLATE PROCESS CAN INVOLVE REVIEW BY HIGHER COURTS OR RECEIPT OF EXECUTIVE CLEMENCY. ON OCCASION, SOME MINOR NARCOTICS-RELATED OFFENSES (POSSESSION OF A FEW MARIJUANA CIGARETTES) HAVE BEEN PUNISHED ONLY BY FINE AND EXCLUSION. PAROLE (CONDITIONAL LIBERTY) EXISTS IN CUBA. AMERICAN DRUG TRAFFICKERS (WHO HAVE USUALLY ARRIVED HERE AFTER THEIR BOATS OR AIRCRAFT HAVE FOUNDERED OR CRASHED) SO FAR HAVE USUALLY BEEN FREED AFTER SERVING ONLY THREE TO FIVE YEARS OF THEIR FOUR TO EIGHT YEAR SENTENCES.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NARCOTICS, LAW
Control Number: n/a
Copy: SINGLE
Draft Date: 24 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978HAVANA02146
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780303-0974
Format: TEL
From: HAVANA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780729/aaaaaxtr.tel
Line Count: 107
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: f43ff96d-c288-dd11-92da-001cc4696bcc
Office: ACTION ARA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 STATE 170187
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 21 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1911495
Secure: OPEN
Status: NATIVE
Subject: NARCOTICS LAWS - CUBA
TAGS: SNAR, CU
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/f43ff96d-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014